

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Atlanticare Medical Center EMS) File Number: EB-FIELDNER-12-00004868
Licensee of WQME366) NAL/Acct. No: 201332400004
Egg Harbor Township, New Jersey) FRN: 0019924471

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: September 23, 2013

Released: September 23, 2013

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Atlanticare Medical Center EMS (Atlanticare), licensee of Private Land Mobile Radio Station WQME366 in Egg Harbor Township, New Jersey, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act)1 and Section 1.903(a)-(b) of the Commission's Rules (Rules)2 by operating radio transmitting equipment on the frequency 154.4825 MHz from an unauthorized location in Hammonton, New Jersey. We conclude, pursuant to Section 503(b) of the Act,3 that Atlanticare is apparently liable for a forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On October 17, 2012, the Enforcement Bureau's Philadelphia Office (Philadelphia Office) received a complaint of interference from Sunshine Communications Corp. (Sunshine), licensee of Private Land Mobile Radio Station WPYX851 in Philadelphia, Pennsylvania, alleging that an unidentified digital transmitter was causing harmful co-channel interference on the frequency 154.4825 MHz in the Philadelphia, Pennsylvania area.4

3. On October 17, 2012, immediately after receiving the complaint, agents from the Philadelphia Office monitored radio transmissions on the frequency 154.4825 MHz. Using direction finding techniques, agents identified the source of the transmissions on 154.4825 MHz as a mobile relay station operating from the municipal water tower along North 4th Street in Hammonton, New Jersey, near the coordinates 39° 39' 2.92" North Latitude 074° 48' 22.05" West Longitude (Water Tower). The agents conducted an inspection of the radio transmitting equipment, which was located inside the Water Tower and, with the assistance of a Town of Hammonton employee, determined that Atlanticare was operating a

1 47 U.S.C. § 301.

2 47 C.F.R. § 1.903(a)-(b).

3 47 U.S.C. § 503(b).

4 See Complaint (October 17, 2012) (on file in EB-FIELDNER-00004868).

mobile relay station on the frequency 154.4825 MHz.⁵ Later that day, agents coordinated radio transmission tests with an Atlanticare technician and verified that Atlanticare's operation of the mobile relay station on 154.4825 MHz was the source of the interference to Sunshine.

4. After the inspection, the agents searched the Commission's records and found that Atlanticare holds a license for Private Land Mobile Radio Station WQME366. Pursuant to the license for Station WQME366, Atlanticare is authorized to operate mobile relay stations from five different locations.⁶ The license for Station WQME366, however, does not authorize operation of a mobile relay station from inside the Water Tower.

5. On November 20, 2012, the Philadelphia Office issued a Notice of Violation to Atlanticare for operating a mobile relay station from an unauthorized location.⁷ On December 7, 2012, the Philadelphia Office received a response from Atlanticare, in which Atlanticare admitted to operating the mobile relay station from the Water Tower in Hammonton, New Jersey.⁸ Atlanticare also reported that Station WQME366 was deactivated after the October 17, 2012 inspection and would remain deactivated until all discrepancies had been resolved.

6. On April 30, 2013, the Commission granted Atlanticare a special temporary authorization to operate a mobile relay station from the Water Tower under call sign WQRF240.⁹ In addition, a representative from Atlanticare's radio vendor reported to an agent in the Philadelphia Office that it was in the process of applying for a license for Atlanticare to operate a mobile relay station from the Water Tower on a permanent basis.

III. DISCUSSION

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.¹⁰ Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹¹ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to

⁵ The agents were able to identify the equipment as belonging to Atlanticare because the cables connected to the equipment were labeled "Atlanticare."

⁶ Atlanticare's license for Station WQME366 authorizes the operation of mobile relay stations from the following five locations: (1) 39-21-16.3 N, 074-26-12.8 W; (2) 38-59-45.0 N, 074-50-18.0 W; (3) 39-16-48.7 N, 074-33-42.9 W; (4) 39-32-01.4 N, 074-40-58.6 W; and (5) 39-19-14.4 N, 074-46-16.2 W.

⁷ See *Atlanticare Medical Center EMS*, Notice of Violation, V201332400004 (Nov. 20, 2012) (on file in EB-FIELDNER-12-00004868) (*NOV*). The *NOV* also cited Atlanticare for transmitting digital emissions on the frequency 154.4825 MHz; the license for Station WQME366 only authorizes FM narrowband analog voice emissions.

⁸ See Letter from Margaret Belfield, Chief Operating Officer, *Atlanticare Medical Center EMS* (Dec. 7, 2012) (on file in EB-FIELDNER-12-00004868) (*Response*). In its *Response*, Atlanticare states that the license application mistakenly indicated that Station WQME366 would operate on an analog basis. Atlanticare also reported that its radio vendor was in the process of preparing an application to address the location of the station.

⁹ See Application No. 0005756949, granted April 30, 2013.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 U.S.C. § 312(f)(1).

both Sections 312 and 503(b) of the Act,¹² and the Commission has so interpreted the term in the Section 503(b) context.¹³ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁴ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁵

A. Unauthorized Operation

8. The record evidence in this case establishes that Atlanticare operated radio transmitting equipment from a location for which it was not authorized. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license issued by the Commission.¹⁶ Section 1.903(a) of the Rules requires that stations in the Wireless Radio Service must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.¹⁷ In addition, Section 1.903(b) provides that the holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization.¹⁸ During an inspection on October 17, 2012, agents found that Atlanticare was operating a mobile relay station on the frequency 154.4825 MHz from the Water Tower in Hammonton, New Jersey. Atlanticare violated the foregoing sections of the Act and Rules because its FCC license for Private Land Mobile Radio Station WQME366 does not authorize operation of radio transmitting equipment on the frequency 154.4825 MHz from that location. Therefore, based on the evidence before us, we find that Atlanticare apparently willfully and repeatedly violated Section 301 of the Act and Section 1.930(a)–(b) of the Rules by operating radio transmitting equipment from an unauthorized location.

B. Proposed Forfeiture Amount and Reporting Requirement

9. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operating on an unauthorized frequency is \$4,000.¹⁹ In assessing the

¹² H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms”).

¹³ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁴ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362, para. 9.

¹⁶ 47 U.S.C. § 301.

¹⁷ 47 C.F.R. § 1.903(a).

¹⁸ 47 C.F.R. § 1.903(b).

¹⁹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recon. denied*,

(continued....)

monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.²⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Atlanticare is apparently liable for a forfeiture of \$4,000 for operating radio transmitting equipment from an unauthorized location.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204(b), 0.311, 0.314, and 1.80 of the Commission's rules, Atlanticare Medical Center EMS is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violations of Section 301 of the Act and Section 1.903(a)–(b) of the Commission's rules.²¹

11. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Atlanticare Medical Center EMS **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Atlanticare shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government

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15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁰ 47 U.S.C. § 503(b)(2)(E).

²¹ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 1.903(a)–(b).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules.²⁴ The written statement, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047, and must include the NAL/Account number referenced in the caption. The statement should also be emailed to NER-Response@fcc.gov.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Atlanticare Medical Center EMS at 6685 Washington Avenue, Egg Harbor Township, New Jersey 08234.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia District Office
Northeast Region
Enforcement Bureau

²³ See 47 C.F.R. § 1.1914.

²⁴ See 47 C.F.R. §§ 1.80(f)(3), 1.16.